Enersafe Sdn Bhd (formerly known as General Tractors Services Sdn Bhd) v Megarina Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO T–02–29 OF 2002
DENIS ONG, AZMEL AND ZULKEFLI JJCA
27 FEBRUARY 2006

Civil Procedure — Jurisdiction — High Court — Claim against defendant in respect of goods sold and delivered by plaintiff to defendant's project in Terengganu — Supply of materials, business address of appellant in Terengganu — Defendant resided in Sarawak — Whether the High Court at Kuala Terengganu has the jurisdiction to entertain the respondent's claim — Concurrent jurisdiction — Courts of Judicature Act 1964 s 23(1)

The respondent/plaintiff filed a claim against the appellant/defendant in respect of goods sold and delivered by the respondent to the appellant at its project in Paka, Terengganu pursuant to a supply agreement. The appellant thereafter filed an application to strike out the respondent's writ and statement of claim under O 18 r 19 of the Rules of the High Court 1980 ('the RHC') on the ground that the High Court at Kuala Terengganu does not have the jurisdiction to entertain the respondent's claim. Both the learned senior assistant registrar and later, on appeal to the High Court judge, dismissed with costs the appellant's application and ruled that the High Court at Kuala Terengganu has the jurisdiction to hear the respondent's claim.

Held, dimissing the appeal:

(1) The learned judge had rightly stated that in order to decide whether or not the High Court in Kuala Terengganu has the jurisdiction, the court has to examine the provision of s 23(1) of the courts of Judicature Act 1964 ('the Act'). This court agreed with the views and finding of the learned judge when he stated that subparas (a), (b), (c) and (d) and each of them is followed by a comma and the word 'or', and this means that they must be construed disjunctively (see paras 7 and 8).

(2) In this case, it is not disputed that the supply of materials as envisaged in the supply agreement was delivered to the appellant's project at Paka, Terengganu and the appellant had a business address in Terengganu. With the existence of these undisputed facts, it was clearly shown that this action comes within the meaning of the second and third limb of s 23(1) of the Act (see para 9).

(3) The appellant's application which this court is required to decide, is not on the issue of 'forum conveniens' but on the issue of whether the High Court at Kuala Terengganu has the jurisdiction to entertain the respondent's claim (see para 10).

(4) Based on the facts of this case and a proper construction of s 23(1) of the Act, the court was of the view that it is not inconsistent or unlawful for this court to arrive at the finding that both the High Court at Kuala Terengganu and the High Court at Miri, Sarawak have the jurisdiction to entertain the respondent's claim. Whatever legitimate reasons may be advanced in favour of the appellant that the respondent should have commenced its action in the High Court at Miri, Sarawak, the court was of the view, however, that it would not nullify the respondent's right in choosing the forum to file and pursue the action at the High Court in Kuala Terengganu which has concurrent jurisdiction to entertain such a claim (see para 11).

[Bahasa Malaysia summary

Responden memfailkan satu tuntutan terhadap perayu berhubung barangan yang dijual dan dihantarkan oleh responden kepada perayu di tapak projek perayu di Paka, Terengganu berikutan dengan satu perjanjian pembekalan. Selepas dari itu, perayu telah memohon untuk membatalkan writ dan pernyataan tuntutan perayu di bawah A 18 k19 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas alasan bahawa Mahkamah Tinggi tidak mempunyai bidang kuasa untuk melayan tuntutan plaintif. Kedua-dua penolong kanan pendaftar dan selepas itu, melalui rayuan ke Hakim Mahkamah Tinggi, menolak dengan kos permohonan perayu dan memutuskan bahawa Mahkamah Tinggi Kuala Terengganu mempunyai bidang kuasa untuk mendengar tuntutan responden.

Diputuskan, menolak rayuan tersebut:

(1) Hakim yang bijaksana dengan tepat telah menyatakan bahawa untuk memutuskan sama ada Mahkamah Tinggi Kuala Terengganu mempunyai bidang kuasa, Mahkamah harus meneliti peruntukan s 23(1) Akta Mahkamah Kehakiman 1964 ('Akta tersebut'). Mahkamah ini bersependapat dengan perhatian dan keputusan hakim yang bijaksana apabila beliau menyatakan bahawa sub-perenggan (a), (b), (c) dan (d) dan setiap satunya diikuti dengan koma dan perkataan 'atau', dan ini bermaksud mereka harus ditafsirkan satu per satu (lihat perenggan-perenggan 7 dan 8).

(2) Dalam kes ini adalah tidak dipertikaikan bahawa pembekalan bahan-bahan seperti di dalam perjanjian pembekalan dihantar ke tapak projek perayu di Paka, Terengganu dan perayu mempunyai alamat perniagaan di Terengganu. Dengan kehadiran fakta-fakta yang tidak dipertikaikan ini, adalah jelas tindakan ini dibawa dalam lingkungan sub-perenggan kedua dan ketiga s 23(1) Akta tersebut (lihat perenggan 9).

(3) Permohonan perayu yang perlu diputuskan di mahkamah ini, bukan atas isu 'forum conveniens' tetapi atas isu sama ada Mahkamah Tinggi di Kuala Terengganu mempunyai bidang kuasa untuk mendengar tuntutan responden (lihat perenggan 10).

(4) Berdasarkan fakta-fakta kes dan penterjemahan yang betul s 23(1) Akta tersebut, mahkamah berpendapat bahawa ia bukannya tidak konsisten atau

menyalahi undang-undang untuk Mahkamah ini berpendapat bahawa kedua-dua Mahkamah Tinggi Kuala Terengganu dan Mahkamah Tinggi Miri, Sarawak mempunyai bidang kuasa untuk mendengar tuntutan responden. Segala apa alasan-alasan yang sah yang dapat dibentangkan oleh perayu bahawa responden seharusnya memulakan tindakannya di Mahkamah Tinggi Miri, Sarawak, mahkamah berpendapat, ia tidak membatalkan hak responden memilih forum untuk memfailkan dan mengambil tindakan di Mahkamah Tinggi Kuala Terengganu yang mempunyai bidang kuasa serentak untuk mendengar tuntutan ini. (lihat perenggan 11).]

Notes

For cases on jurisdiction of the High Court, see 2 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 3958–4026.

Cases referred to

Malacca Securities Sdn Bhd v Loke Yu [1999] 6 MLJ 112 (folld)

Legislation referred to

Courts of Judicature Act 1964 s 23(1)
Rules of the High Court 1980 O 18 r 19

Appeal from: Civil Suit No 22–50 of 2000 (High Court, Kuala Terengganu) (reported in [2002] 2 MLJ 182)

Dato' Victor Isaacs (Bong Ah Loi and Subayogan S with him) (Isaacs & Partners) for the appellant.

CK Ng (Aziztulazwa bte Abdul Wahab with him) (Wong & Associates) for the respondent.

Zulkefli JCA (delivering judgment of the court):

INTRODUCTION

[1] The respondent ('the plaintiff ill the court below') filed a claim against the appellant ('the defendant in the court below') for the sum of RM3,382,740.72 being the amount allegedly due to the respondent from the appellant in respect of goods sold and delivered by the respondent to the appellant at its project in Paka, Terengganu pursuant to a supply agreement dated 15th November 1966 entered into between the parties.

[2] The appellant thereafter filed an application by way of summons in chambers to strike out the respondent's writ and statement of claim under O 18 r 19 of the Rules of the High Court 1980 ('the RHC') on the ground that the High Court at Kuala Terengganu does not have the jurisdiction to entertain the respondent's claim. The learned senior assistant registrar ('the SAR') dismissed with costs the appellant's application and ruled that the High Court at Kuala Terengganu has the jurisdiction to hear the respondent's claim.

[3] The learned judge of the High Court on appeal by the appellant to the judge in chambers against the decision of the SAR dismissed the appellant's appeal with costs and affirmed the decision of the SAR. The appellant now appeals before us against the said decision of the learned judge.

CONTENTION OF THE PARTIES

[4] In the court below and before us it was contended on behalf of the appellant that the High Court at Kuala Terengganu lacks the jurisdiction to hear the respondent's claim for the following reasons:

(i) the cause of action arose in Miri, Sarawak;

(ii) the registered addresses of both the appellant and respondent are in Miri, Sarawak;

(iii) the cause of action is based on the supply agreement entered into by the parties in Miri, Sarawak;

(iv) all the invoices of the respondent were issued and effected in Miri, Sarawak and sent to the appellant for payment there in Miri, Sarawak;

(v) all the witnesses for the appellant reside in Miri, Sarawak

[5] It is the case of the appellant that the failure by the appellant to pay the amount as stated in the said invoices which constituted the alleged breach of the agreement on the part of the appellant, occurred in Miri, Sarawak. It is therefore contended for the appellant that the cause of action and the facts on which the proceedings are based have accrued and occurred in Miri, Sarawak. On the question of jurisdiction, it was submitted for the appellant that the provision of s 23(1)(a) and (c) of the Courts of Judicature Act 1964 ('the Act') applies in favour of the appellant. Thus, the High Court which should have the jurisdiction to hear this case is the High Court in Sabah and Sarawak.

[6] In disputing the appellant's application the respondent submitted that although the supply agreement upon which the basis of the claim is made was entered into by the parties in Miri, Sarawak, the said supply agreement however was for the supply of building materials by the respondent to the appellant for the appellant's project in Paka, Terengganu. Furthermore, at the material time, the appellant also had a business address at No 743, Jalan Besar, Kg Cacar Batu, 23100 Paka, Dungun, Terengganu. For the respondent, it was pointed out that these facts were not disputed at all by the appellant. Learned counsel for the respondent submitted that the High Court of Malaya at Kuala Terengganu therefore has the jurisdiction to hear the respondent's claim by virtue of the provisions of s 23(1)(b) and (c) of the Act.

DECISION OF THE COURT ON APPEAL

[7] Having perused the grounds of judgment of the learned trial Judge, we are of the considered view that the learned judge, after having considered all the relevant facts and the applicable law, had arrived at a correct decision. The learned judge had

rightly stated that in order to decide whether or not the High Court in Kuala Terengganu has the jurisdiction, the court has to examine the provision of s 23(1) of the Act which reads as follows:

> Subject to the limitations contained in art 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where —
>
> (a) the cause of action arose, or
>
> (b) the defendant or one of several defendants resides or has his place of business, or
>
> (c) the facts on which the proceedings are based exist or are alleged to have occurred, or
>
> (d) any land the ownership of which is disputed is situated,
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> within the local jurisdiction of the court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

[8] We are in agreement with the views and finding of the learned judge when he stated that subparagraphs (a), (b), (c) and (d) and each of them is followed by a comma and the word 'or', and this means that they must be construed disjunctively. The learned judge went on to state that a party instituting a proceeding in a High Court may do so if his case falls within any one of the subparagraphs, citing the case of *Malacca Securities Sdn Bhd v Loke Yu* [1998] 6 MLJ 112 as the authority for the said proposition.

[9] In this case, it is not disputed that the supply of materials as envisaged in the supply agreement was delivered to the appellant's project at Paka, Terengganu and the appellant had a business address in Terengganu. With the existence of these undisputed facts, it was clearly shown that this action come within the meaning of the second and third limbs of s 23(1) of the Act. We therefore find that the learned judge was right in holding that the respondent is entitled to file this action at the High Court in Kuala Terengganu as the said court has the jurisdiction to hear it.

[10] We would like to state here that from the facts of this case it would appear that both the High Court at Kuala Terengganu and the High Court at Miri, Sarawak have concurrent jurisdiction to hear the respondent's claim. The appellant would be correct in its argument that the cause of action arose and the facts on which the action is based have also occurred in Miri, Sarawak coupled with the fact that the appellant resides there too. Under the circumstances, the appellant was right in contending that the provisions of s 23(1)(a) and (c) of the Act apply in favour of the appellant. Be that as it may, the appellant's application which this court is required to decide, is not on the issue of 'forum conveniens' but on the issue of whether the High Court at Kuala Terengganu has the jurisdiction to entertain the respondent's claim.

[11] Based on the facts of this case and a proper construction of s 23(1) of the Act, we are of the view that it is not inconsistent or unlawful for this court to arrive at the finding that both the High Court at Kuala Terengganu and the High Court at Miri, Sarawak have the jurisdiction to entertain the respondent's claim. Whatever legitimate reasons may be advanced in favour of the appellant that the respondent

should have commenced its action in the High Court at Miri, Sarawak, we take the view, however that it would not nullify the respondent's right in choosing the forum to file and pursue the action at the High Court in Kuala Terengganu which has concurrent jurisdiction to entertain such a claim.

CONCLUSION

[12] We find it is most appropriate here to state the well established principle in that the power of striking out pleadings under O 18 r 19 of the RHC as invoked by the appellant in this case is too well known that it can only be exercised when the respondent's claim on the face of it is obviously bound to fail. The respondent's claim, however, is not such a case. We therefore dismissed the appeal with costs and affirmed the decision of the court below. The deposit is to be paid to the account of taxed costs.

Appeal dismissed.

Reported by Sally Kee